IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2857 of 1994

with

SPECIAL CIVIL APPLICATIONS Nos 3037, 3038 and 3039 of 1994

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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KUMUDCHANDRA RAMJIBHAI SHAH

Versus

SAHYOG CO-OPERATIVE BANK LTD

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Appearance:

1. Special Civil Application No. 2857 of 1994

MR BG JANI with MR DS SHAH for the Petitioner

MR GIRISH D BHATT for Respondents Nos. 1-2

Respondents Nos. 3-6 served

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 20/01/2003

COMMON ORAL JUDGEMENT

Neither of the learned advocates is present on call.

The petitioner in all these four petitions is one Kumudchandra Ramjibhai Shah. The petitioner challenges the decree passed by the Board of Nominees and confirmed by the Gujarat State Cooperative Tribunal (hereinafter referred to as 'the Tribunal'). The petitioner also challenges the notices issued by the Special Recovery Officer. All these petitions involve identical question of law and, hence, are disposed of by this common judgment and order.

It appears that the Sahyog Cooperative Bank, the respondent no.1 herein (hereinafter referred to as 'the Bank'), had instituted Arbitration Suit Nos.1294/1990 to 1297/1990 against the petitioner and some others for recovery of moneys due from the said defendants. A decree was passed in the respective suit by the Board of Nominees on 16th December, 1990. Feeling aggrieved, some of the defendants preferred Appeals Nos.239/1992 to 242/1992 before the Tribunal. All the four appeals were dismissed by a common judgment and order dated 15th September, 1993. Feeling aggrieved, the petitioner has preferred the present petitions.

Pursuant to the decree passed by the Tribunal, the Special Recovery Officer had sought to execute the decrees by issuing notice on 5th February, 1994. The petitioner has also challenged the said notice dated 5th February, 1994.

It is the claim of the petitioner that the petitioner was not a party to either of the transactions of overdraft in respect of which the respective decree has been passed against the petitioner and the concerned respondents. The petitioner has submitted that he has been impleaded as the party respondent merely on the ground that he is one of the heirs of late Mr.R.N.Shah, who was the debtor of the Bank. Further, the petitioner had not stood surety for the said amount borrowed by his late father Mr.R.N.Shah. However, illegally and without the authority of law the respondent authority has attached the salary of the petitioner, who happens to be the servant of the Ahmedabad Municipal Corporation. It is also contended that Section 96 of the Act does not empower the Board of Nominees to entertain the disputes in the present nature (i.e. between the Society and the

heirs and legal representatives of the deceased member).

I have perused the records. The Tribunal has categorically recorded that the late Ramjibhai Nagindas Shah, the father of the petitioner and his five sons (including the present petitioner) had money transaction with the Bank; that the said Ramjibhai Shah had borrowed a loan from the Bank and, his sons stood sureties for the said transaction. A further loan was borrowed by the said Ramjibhai Shah and one of his sons Arvindbhai. All other sons of the said Ramjibhai Shah had stood sureties for the said transaction; that Arvindbhai and his brothers i.e. the sons of the said Ramjibhai Shah carried on business in partnership in the name of M/s. Relief Medical and Optical Store. The loan was borrowed by them in respect of the said partnership business. None of the said amounts was repaid by the concerned borrowers. In view of the above facts recorded by the Tribunal, I see no substance in the contention raised by the petitioner that he was not a party to any of the disputed transactions, nor did he stand surety in any of the said transactions.

As to Section 96 of the Act, be it noted that the said section empowers the Registrar or its nominee to entertain and resolve a dispute relating, inter alia, to the business of the Society where the parties to the dispute are, inter alia, a member, a past member or a person claiming through a member, a past member or a deceased member of the Society. Hence, in my view, the Board of Nominees had a jurisdiction to entertain the present disputes and to resolve the same.

In above view of the matter, no interference with the impugned judgment and order of the Tribunal or the action of the Special Recovery Officer is warranted. Hence, all these petitions are dismissed with costs. Rule nisi issued in each of these petitions is discharged. Interim relief stands vacated. The Registry shall maintain copy of this judgment and order in each of these petitions.

( Ms. R.M. Doshit, J. )

/sakkaf